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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 CODY R.,)
08 Plaintiff,) CASE NO. C20-5626-MAT
09 v.)
10 ANDREW M. SAUL,) ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff proceeds through counsel in his appeal of a final decision of the
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before
16 an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the
17 administrative record (AR), and all memoranda of record, this matter is AFFIRMED.

18 **FACTS AND PROCEDURAL HISTORY**

19 Plaintiff was born on XXXX, 1990.¹ He did not complete high school and does not
20 have a GED, and previously worked as a fast-food cook. (AR 316-17.)

21 Plaintiff applied for SSI in July 2017. (AR 186-91.) That application was denied and

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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 Plaintiff timely requested a hearing. (AR 115-23, 127-34.)

02 On April 18, 2019, ALJ Steve Lynch held a hearing, taking testimony from Plaintiff
03 and a vocational expert (VE). (AR 31-52.) On May 3, 2019, the ALJ issued a decision
04 finding Plaintiff not disabled. (AR 15-26.) Plaintiff timely appealed. The Appeals Council
05 denied Plaintiff's request for review on April 24, 2020 (AR 1-6), making the ALJ's decision
06 the final decision of the Commissioner. Plaintiff appealed this final decision of the
07 Commissioner to this Court.

08 **JURISDICTION**

09 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
10 405(g).

11 **DISCUSSION**

12 The Commissioner follows a five-step sequential evaluation process for determining
13 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
14 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
15 not engaged in substantial gainful activity since the application date. (AR 17.) At step two, it
16 must be determined whether a claimant suffers from a severe impairment. The ALJ found
17 severe Plaintiff's rotator cuff tear, marijuana abuse, bipolar disorder, anxiety, posttraumatic
18 stress disorder, and personality disorder. (AR 17.) Step three asks whether a claimant's
19 impairments meet or equal a listed impairment. The ALJ found that Plaintiff's impairments
20 did not meet or equal the criteria of a listed impairment. (AR 17-19.)

21 If a claimant's impairments do not meet or equal a listing, the Commissioner must
22 assess residual functional capacity (RFC) and determine at step four whether the claimant has

01 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
02 performing medium work with additional limitations: he can occasionally reach overhead
03 with his right arm. He can frequently handle, finger, and feel bilaterally. He should avoid
04 concentrated exposure to hazards. He can follow simple instructions and perform simple
05 tasks. He can have incidental public contact, and occasional co-worker contact with no team
06 activities. (AR 19.)

07 Plaintiff has no past relevant work (AR 25), and thus the ALJ moved on to step five,
08 where the burden shifts to the Commissioner to demonstrate that the claimant retains the
09 capacity to make an adjustment to work that exists in significant levels in the national
10 economy. With the assistance of the VE, the ALJ found Plaintiff capable of transitioning to
11 other representative occupations, such as janitor, floor waxer, and laundry worker II. (AR 25-
12 26.)

13 This Court's review of the ALJ's decision is limited to whether the decision is in
14 accordance with the law and the findings supported by substantial evidence in the record as a
15 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
16 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
17 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
18 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
19 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
20 F.3d 947, 954 (9th Cir. 2002).

21 Plaintiff argues the ALJ erred in finding two examining psychologists' opinions to be
22 unpersuasive. The Commissioner argues that the ALJ's decision is supported by substantial

evidence and should be affirmed.

Medical opinion evidence

Legal standards

Because Plaintiff applied for SSI after March 27, 2017, new regulations apply to the ALJ's evaluation of medical opinion evidence. Under the regulations, an ALJ "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)[.]" 20 C.F.R. §§ 404.1520c(a), 416.920c(a).² The ALJ must articulate and explain the persuasiveness of an opinion or prior finding based on "supportability" and "consistency," the two most important factors in the evaluation. *Id.* at (a), (b)(1)-(2). The "more relevant the objective medical evidence and supporting explanations presented" and the "more consistent" with evidence from other sources, the more persuasive a medical opinion or prior finding. *Id.* at (c)(1)-(2). The ALJ may but is not required to explain how other factors were considered, as appropriate, including relationship with the claimant (length, purpose, and extent of treatment relationship; frequency of examination); whether there is an examining relationship; specialization; and other factors, such as familiarity with other evidence in the claim file or understanding of the Social Security disability program's policies and evidentiary requirements. *Id.* at (b)(2), (c)(3)-(5). *But see id.* at (b)(3) (where finding two or more opinions/findings about same issue equally supported and consistent with the record, but not exactly the same, ALJ will

² "A prior administrative medical finding is a finding, other than the ultimate determination about [disability], about a medical issue made by our Federal and State agency medical and psychological consultants at a prior level of review . . . in [a] claim based on their review of the evidence in your case record[.]" 20 C.F.R. §§ 404.1513(a)(5), 416.913(a)(5).

01 articulate how other factors were considered). Where a single medical source provides
02 multiple opinions or findings, the ALJ conducts a single analysis and need not articulate how
03 each opinion or finding is considered individually. *Id.* at (b)(1).

04 Examining psychologists' opinions

05 Peter Weiss, Ph.D., examined Plaintiff in April 2017, after reviewing another
06 examining psychologist's opinion, and completed a DSHS form opinion describing his
07 symptoms and limitations. (AR 280-84.) Kathleen Mayers, Ph.D., examined Plaintiff in
08 January 2018, after reviewing Dr. Weiss's opinion and a handful of other records, and wrote a
09 narrative report describing Plaintiff's symptoms and limitations. (AR 315-21.)

10 The ALJ summarized the opinions of Drs. Weiss and Mayer and explained why he
11 found them unpersuasive:

12 They are one time evaluations and they [are] not entirely consistent with or
13 supported by the totality of the evidence. They seem to be largely based on
14 history and reported symptoms provided by claimant, which as discussed
15 above, do not appear to be as limiting as he has alleged based on his activities
16 of daily living and his limited treatment. They also are not consistent with the
17 prior ALJ determination findings, and there is no support in the medical
18 evidence of record [for the proposition that] the claimant's mental functioning
19 has lessened or deteriorated since the prior ALJ decision issued.

20 (AR 24.) Plaintiff argues that the ALJ's findings are not supported by substantial evidence.

21 First, Plaintiff argues that the opinions of Drs. Weiss and Mayers are not overly reliant
22 on his self-reporting. Dkt. 15 at 5-7. The Court disagrees. The "clinical findings" of Dr.
Weiss's opinion consists entirely of Plaintiff's self-reports (AR 281), and Dr. Mayers's
conclusions as to disabling social limitations reference only Plaintiff's self-reported social
problems (AR 321). Dr. Mayers herself observed Plaintiff to be pleasant and responsive, and

01 maintaining good eye contact, and she did not cite any objective clinical basis for the social
02 limitations she described. (AR 317.) Because some or all of the disabling limitations
03 identified by the examiners depend largely or entirely on Plaintiff's self-reports, and Plaintiff
04 does not dispute that the ALJ properly discounted his self-reporting, the ALJ reasonably
05 found the examiners' opinions to be less persuasive in light of their reliance on Plaintiff's
06 self-reports. This is a proper consideration of supportability under 20 C.F.R. § 416.920c.
07 Even under Ninth Circuit authority predating the new regulations, this line of reasoning would
08 be legally sufficient. *See, e.g., Ghanim v. Colvin*, 763 F.3d 1154, 1162-63 (9th Cir. 2014)
09 (ALJ may reject treating provider's opinions if based "to a large extent" on discredited self-
10 reports and not clinical evidence); *Bray v. Comm'r of Social Sec. Admin.*, 554 F.3d 1219,
11 1228 (9th Cir. 2009) ("As the ALJ determined that Bray's description of her limitations was
12 not entirely credible, it is reasonable to discount a physician's prescription that was based on
13 those less than credible statements.").

14 Next, Plaintiff argues that the ALJ erred in finding that there was no evidence that
15 Plaintiff's mental condition had deteriorated since the prior ALJ decision, because the
16 examiners' opinions themselves so indicated. (Dkt. # 15 at 7-8.) The Commissioner does not
17 explicitly defend this line of reasoning,³ instead shifting focus to the ALJ's initial finding that
18 the examiners' opinions were inconsistent with the record as a whole. The Commissioner
19 points to evidence that the ALJ also relied on in discounting Plaintiff's subjective allegations,
20 such as Plaintiff's lack of treatment and his social activities (Dkt. 16 at 6, 8), which is also

21 ³ Any error in this line of reasoning is harmless, given that the remainder of the ALJ's
22 assessment of the examiners' opinions is reasonable and supported by substantial evidence, as
indicated herein.

01 inconsistent with the examiners' opinions. This is a proper consideration of consistency
02 under 20 C.F.R. § 416.920c, and again, even under Ninth Circuit authority predating the new
03 regulations, this line of reasoning would be legally sufficient. *See, e.g., Tommasetti v. Astrue*,
04 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion presenting
05 inconsistencies between the opinion and the medical record). To the extent that Plaintiff
06 points to evidence that he contends is consistent with the examiners' opinions (Dkt. 17 at 6-9),
07 the Court declines to reweigh the evidence and instead reviews whether the ALJ's decision is
08 supported by substantial evidence. *See Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir.
09 1997) ("[T]he key question is not whether there is substantial evidence that could support a
10 finding of disability, but whether there is substantial evidence to support the Commissioner's
11 actual finding that claimant is not disabled.").

12 Because the ALJ's assessment of the examiners' opinions is reasonable and supported
13 by substantial evidence, the Court affirms this portion of the ALJ's decision and rejects
14 Plaintiff's assignment of error.

15 CONCLUSION

16 For the reasons set forth above, this matter is AFFIRMED.

17 DATED this 21st day of April, 2021.

18 

19 Mary Alice Theiler
20 United States Magistrate Judge